H-2028, P-405/PA-91 ORDER APPROVING TRANSFER OF OPERATIONS AND AUTHORITY

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Darrel L. Peterson	Chair
Cynthia A. Kitlinski	Commissioner
Dee Knaak	Commissioner
Norma McKanna	Commissioner
Patrice M. Vick	Commissioner

In the Matter of the Joint Petition of Centel Corporation, Central Telephone company, Rochester Telephone Corporation, and Vista Telephone Company of Minnesota for Approval of Transfer of Telephone Operations and Authority to Provide Telephone Service	ISSUE DATE: June 26, 1991 DOCKET NO. H-2028, P-405/PA-91-130 ORDER APPROVING TRANSFER OF OPERATIONS AND AUTHORITY

PROCEDURAL HISTORY

On March 26, 1991, Centel Corporation (Centel), Central Telephone Company (Central Telephone), Rochester Telephone Corporation (Rochester), and Vista Telephone Company of Minnesota (Vista-Minnesota) (collectively the Petitioners) filed a Joint Petition under Minn. Stat. § 237.23, seeking Commission approval and authority for:

(1) the transfer of Central Telephone's Minnesota telephone operations and property to Vista-Minnesota; and

(2) the transfer of Central Telephone's authority to provide intrastate telephone services in Minnesota to Vista-Minnesota.

The Petitioners also submitted supplementary information with the Joint Petition. This information was served on the Department of Public Service (Department) and the Residential Utilities Division of the Office of the Attorney General (RUD-OAG).

On May 20, 1991, the Department submitted its Report of Investigation and Recommendation.

On June 20, 1991, the RUD-OAG submitted its comments to the Commission.

This matter came before the Commission on June 24, 1991.

FINDINGS AND CONCLUSIONS

The Commission has jurisdiction over this proceeding under Minn. Stat. § 237.23, which requires Commission consent to transfer telephone company property.

Centel is a Kansas corporation which owns all of the outstanding common stock of Central Telephone. The Minnesota division of Central Telephone currently serves approximately 86,000 access lines in 45 local exchanges in Minnesota. Rochester is a New York corporation, publicly traded on the New York Stock Exchange. Vista-Minnesota is a Minnesota Corporation formed by Rochester to hold and operate the Minnesota telephone business Rochester is seeking to acquire from Central Telephone. Rochester's wholly owned subsidiary, Rochester Tel Subsidiary Telco, Inc. (RISTI), will own all of Vista-Minnesota's stock if the transfer is approved.

The Commission has examined carefully the record and financial strength of the companies involved. The Commission has also considered the effect of the proposed transfer on the quality of service and rates. Based on its review, the Commission finds that the transfer of Central Telephone's telephone assets and operations to Vista-Minnesota is consistent with the public interest.

Acquiring Company

Rochester, Vista-Minnesota's parent corporation, is financially sound with extensive holdings and experience in the telecommunications industry. It is one of the largest independent telecommunications companies in the United States, with 1990 revenues in excess of $600 million and more than $1.1 billion in total assets. As of January 1, 1991, Rochester served, either directly or through its operating companies, over 674,000 access lines in 14 states. In addition to Minnesota, Rochester has acquired or is in the process of acquiring local telephone operations in Illinois, Indiana, Michigan, Wisconsin, Iowa, Kansas, and North Dakota. Vista-Minnesota will be Rochester's second largest telephone operation if the transfer from Central Telephone is approved.

Continuity and Quality of Service

The Commission finds that the proposed acquisition will not disrupt or diminish the quality of service to the present customers of Central Telephone. The Petitioners have taken appropriate steps to preserve and provide for continuity of telephone services. These steps include the retention of Central

Telephone's current personnel and provision for support services for up to one year following the transfer. The acquiring company, Rochester/Vista-Minnesota, has agreed to continue the present services and tariffed rates of Central Telephone. Rochester/Vista-Minnesota has also shown a commitment to improving the quality of service. As part of this commitment, Rochester/Vista-Minnesota has agreed to continue Central Telephone's service improvement program and has assumed responsibility for complying with the four-party upgrade required by Minnesota Laws 1991, Ch. 152. Rochester has, in fact, indicated its intent to meet with Commission staff within the next several weeks to discuss its plans for complying with the upgrade requirement.

Effect on Rates

The Commission is particularly concerned about the potential impact of this transfer on rates. Several aspects of this transaction could place pressure on Vista-Minnesota to increase rates above their current levels, namely (1) the acquisition adjustment that will be recognized on the books of Rochester as a result of the purchase; (2) the loss of Central Telephone's Investment Tax Credits which appear to remain with Central Telephone under the Federal Tax Code; and (3) the inability under the Federal Tax Code of Vista-Minnesota to retain Central Telephone's accumulated deferred income taxes arising from the use of accelerated depreciation.

The negative financial impact of the transaction should be offset in the long term by three factors. First, Vista-Minnesota has shown that it will be able to save an additional $936,000 per year in corporate expenses compared to Central Telephone. Second, the negative effect of losing Central Telephone's Investment Tax Credits and accumulated deferred taxes will diminish over time as the tax benefits are amortized. Third, Vista-Minnesota will begin to accumulate deferred taxes on its own after this purchase. Furthermore, Rochester and Vista-Minnesota have given the Commission a number of assurances that will reduce substantially the risk of a rate increase in the short term.

First, Rochester and Vista-Minnesota have warranted to the Commission that if the acquisition is approved they will retain Central Telephone's current tariffed rates and forgo filings for general increases in Minnesota rates as follows:

> For a period of six months following the date on which the parties close on the acquisition of the operating assets of Central Telephone in Minnesota, Vista-Minnesota will not file a request for an overall increase in its rates for service in Minnesota for any reason; and

Vista-Minnesota will not file a request for an overall increase in its rates for service in Minnesota such that interim rates would become effective prior to January 1, 1993, except as necessary to respond to either of the following two conditions:

> (a) known and actual significant and material changes in mandatory legislative, regulatory, or accounting requirements which are beyond Vista-Minnesota's control, which were unforseen at the time of the transfer and which impose a substantial financial burden on the company; or
>
> (b) natural disasters, accidents, or Acts of God which have a significant detrimental effect on Vista-Minnesota's operating expenses and/or its plant in service in Minnesota and which place a substantial financial burden on the company.

The Commission finds this promise an appropriate and necessary condition for approval of the proposed transfer. The Commission accepts this agreement with the understanding that circumstances under which a rate case could be filed are unusual and unlikely to arise in the next 18 months. Furthermore, the Commission emphasizes that a rate case could not be filed under the above exceptions based on the negative financial effects of current mandates such as the four-party upgrade.

Second, Rochester and Vista-Minnesota have promised the Commission that Vista-Minnesota will not seek to recover any acquisition adjustment in its Minnesota intrastate rates. The acquisition adjustment exists when, as in this transfer, the purchase price exceeds the net book value of the acquired assets. The difference is recognized on the books of the acquiring company as an "acquisition adjustment" or "goodwill" generated solely by the transaction. The Commission finds this commitment is an appropriate and necessary condition for approval of the proposed transfer.

Finally, Rochester and Vista-Minnesota have agreed to seek a private ruling from the Internal Revenue Service to determine whether Vista-Minnesota is entitled to retain Central Telephone's Investment Tax Credits. Since Investment Tax Credits are no longer being generated because of the 1986 Tax Reform Act, the Internal Revenue Service might allow Vista-Minnesota to retain these Credits. This would alleviate the negative rate effects that could result from Vista-Minnesota's inability to retain Central Telephone's unamortized Investment Tax Credits. The Commission finds this commitment is an appropriate and necessary condition for approval of the proposed transfer.

The Petitioners have agreed to file a joint affidavit of sale completion within 90 days of the date on which the transaction is completed.

The Commission finds that the promises and assurances of Rochester and Vista-Minnesota provide sufficient protection from the possible adverse financial impact of the acquisition, such that the public interest is adequately protected. There will be no overall increase in rates for Minnesota customers for at least six months following the acquisition and no overall increase in rates for approximately one year thereafter, absent certain unexpected and unforseen events that impose a substantial financial burden on Vista-Minnesota. The acquisition adjustment will not be recovered through rates and Rochester will seek to reduce the negative tax consequences of the transaction by obtaining a private ruling from the Internal Revenue Service.

Given these assurances, as well as Rochester's substantial experience in telecommunications and its commitment to improve the quality of service in the Minnesota area it is seeking to serve, the Commission concludes that the transfer proposed in this docket is in the public interest and should be approved.

ORDER

1. The acquisition of the Minnesota operating properties of Central Telephone by Vista-Minnesota, as described in the Joint Petition and herein, is hereby approved, with the conditions set forth below.

2. All the operating authority to provide intrastate telephone services in Minnesota presently held by Central Telephone, including, without limitation, all Certificates of Territorial Authority, are hereby transferred to Vista-Minnesota without change, limitation, addition, or reduction, effective upon the transfer of the operating properties. Vista-Minnesota shall arrange to update the service area boundary maps maintained by the Department to reflect that transfer.

3. The Minnesota intrastate tariffs of Central Telephone now on file shall be adopted by, and become effective as to, Vista-Minnesota upon the transfer of Central Telephone's Minnesota operating properties to Vista-Minnesota. Within 30 days of the date of this Order, Vista-Minnesota shall file with the Department replacement pages for Central Telephone's present Minnesota tariff, identifying Vista-Minnesota as the operating telephone company providing the services specified in that tariff.

4. Within 90 days of the date upon which the transfer is completed, Petitioners shall file with the Department a joint affidavit regarding the transfer, indicating the date the transfer was completed.

5. Neither Rochester nor Vista-Minnesota nor any of their successors in interest may file for, request, or receive any future recovery from Minnesota intrastate rates of an acquisition adjustment resulting from the acquisition approved in this Order.

6. Rochester and Vista-Minnesota shall seek a private letter ruling from the Internal Revenue Service concerning the permitted treatment of the Investment Tax Credits currently on Central Telephone's Minnesota books and records. Rochester and Vista-Minnesota shall consult with the RUD-OAG on the substance of the request for that ruling.

7. Rochester and Vista-Minnesota have waived their right to seek a general increase in Minnesota rates as follows:

   For a period of six months following the date on which the parties close on the acquisition of the operating assets of Central Telephone in Minnesota, Vista-Minnesota will not file a request for an overall increase in its rates for service in Minnesota for any reason; and

   Vista-Minnesota will not file a request for an overall increase in its rates for service in Minnesota such that interim rates would become effective prior to January 1, 1993, except as necessary to respond to either of the following two conditions:

      (a) known and actual significant and material changes in mandatory legislative, regulatory, or accounting requirements which are beyond Vista-Minnesota's control, which were unforseen at the time of the transfer and which impose a substantial financial burden on the Company; or

      (b) natural disasters, accidents, or Acts of God which have a significant detrimental effect on Vista-Minnesota's operating expenses and/or its plant in service in Minnesota and which place a substantial financial burden on the Company.

8. Within 10 days of the date of this Order, Vista-Minnesota shall submit to the Department for its review and approval a proposed customer notice, explaining the acquisition to its Minnesota customers.

9. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster
Executive Secretary

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